FILED
SEP 13 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 323

ELMER F. CRAVALHO, et al., *Appellants*,

v.

WILLIAM S. RICHARDSON, et al., *Appellees*.

Upon Appeal from the United States District Court for the District of Hawaii

OBJECTION OF APPELLANTS TO MOTION OF HAROLD S. ROBERTS FOR LEAVE TO FILE AMICUS CURIAE BRIEF

JAMES T. FUNAKI
1022 Bethel Street
Honolulu, Hawaii

EUGENE W. I. LAU
Suite 1210
First National Bank Building
Honolulu, Hawaii
Counsel for Appellants

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 323

ELMER F. CRAVALHO, et al., *Appellants,*

v.

WILLIAM S. RICHARDSON, et al., *Appellees.*

Upon Appeal from the United States District Court for the District of Hawaii

---

OBJECTION OF APPELLANTS TO MOTION OF HAROLD S. ROBERTS FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Appellants Elmer F. Cravalho, et al., certain Hawaii State Representatives, hereby file this objection to the Motion of Harold S. Roberts for Leave to File *Amicus Curiae* Brief, filed in this case and in No. 318, *Burns* v. *Richardson, et al.* Appellants withhold consent for the following reasons:

1. Petitioner does not have a substantial interest in this case. The Hawaii Legislature has constructed a

reapportionment plan,[1] which is the main subject of the appeal of Elmer F. Cravalho, et al. Petitioner has failed to show that this reapportionment plan would impair the weight of his vote as a citizen of Hawaii or injure his financial position as a taxpayer of Hawaii.

2. The primary questions raised by the appeal of Elmer F. Cravalho, et al., relate to the provisional Hawaii Senate Reapportionment Plan submitted to the district court on April 14, 1965. The rejection of this plan as violative of the Fourteenth Amendment was the principal reason for the issuance of the injunctive order of April 28, 1965. Petitioner has asked that Hawaii evade these questions of substantial and far-reaching impact. (J.S. pp. 14-19)

3. The decision of the Hawaii Supreme Court, *Guntert* v. *Richardson*, 47 Haw. 662, 394 P. 2d 444 (1964) does not require the dismissal of this appeal as petitioner has alleged.

First, only from the standpoint of permanent reapportionment, the Hawaii Supreme Court stated that in the initial stages of Hawaii's effort to achieve valid reapportionment, the machinery to be used must be by amendment to the State Constitution. 47 Haw. at 667-668.

Secondly, from the standpoint of temporary reap-

---

[1] The provisional Hawaii Senate Reapportionment Plan (H.B. 987, S.D. 1, C.D. 1) was passed by both houses of the Hawaii Legislature and submitted to the Governor of Hawaii for approval. The Governor neither approved nor vetoed the bill within the period provided in the Hawaii Constitution. Therefore, on July 26, 1965, the bill became law without the Governor's signature.

portionment, the Hawaii Supreme Court did not decide the question whether or not the legislature had authority to supply a temporary reapportionment plan, especially after the 1964 elections. 47 Haw. at 669-671.

The *Guntert* case was decided before the 1964 elections, at the inception of Hawaii's efforts to achieve valid reapportionment. 47 Haw. at 668. Since that time the Hawaii Legislature has grappled extensively with the issues of reapportionment and has passed a provisional reapportionment plan and an enactment submitting to the electorate in the 1966 general election the question of the calling of a constitutional convention. Appellants Elmer F. Cravalho, et al., firmly believe that the provisional reapportionment plan achieves equal protection for the people of Hawaii, until the voters shall have the opportunity in the 1966 general election to decide whether they want a constitutional convention on reapportionment.

Further, the district court in its altered order of March 9, 1965, recognized the legislature's authority to provide temporary reapportionment. (J.S. pp. 39a-42a) The provisional Hawaii Senate Reapportionment Plan of April 14, 1965, may be approved either as temporary statutory reapportionment or as a judicially adopted temporary reapportionment plan, if such reapportionment gives equal protection to the people of Hawaii.

4. On May 7, 1965, appellants Elmer F. Cravalho, et al., timely filed their notice of appeal in the district court. Petitioner agrees that the appeal from the order of the district court entered April 28, 1965, was timely.

With respect to the district court order dated

February 17, 1965, and entered April 9, 1965, appellants only question the conclusion which denied the legislature's authority to provide a temporary reapportionment plan (J.S. pp. 35a-36a). However, the district court in its altered order of March 9, 1965, allowed the Hawaii Legislature to enact a temporary reapportionment plan to be submitted to the district court for approval. Until the district court in its order of April 28, 1965, rejected the legislature's temporary reapportionment plan as unconstitutional and reinstated its injunction looking toward a constitutional convention, the district court's conclusion precluding the legislature's authority to provide a temporary reapportionment plan lacked the finality which is essential to appealability. *Zimmern* v. *United States*, 298 U.S. 167, 169-170 (1936); *Leishman* v. *Associated Wholesale Electric Co.*, 318 U.S. 203, 205-206 (1943); *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 177 (1944).

For the reasons above, we urge that the motion for leave to file an *amicus curiae* brief be denied.

Respectfully submitted,

JAMES T. FUNAKI

EUGENE W. I. LAU

Counsel for Appellants